

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

JOHN M. EARLE and
JOHNNY CUPCAKES, INC.

Plaintiffs,

V.

ADJMI APPAREL,
RUN ATHLETICS INTERNATIONAL and
PASTRY,

Defendants.

Civil Case No: 1:08-cv-07341-JFK
CM/ECF

COMPLAINT

Plaintiff John M. Earle and Plaintiff Johnny Cupcakes, Inc. (hereinafter “Johnny Cupcakes”) for their complaint against Defendant Adjmi Apparel, Run Athletics International (hereinafter “Run Athletics”) and Defendant Pastry, states as follows:

INTRODUCTION

1. This action is based upon infringement of U.S. Copyright Registration VA 1-629-638 for the work “Make Cupcakes Not War Design” (hereto annexed as Exhibit A).

THE PARTIES

2. Plaintiff John M. Earle resides at 83 Main Street, Hull, Massachusetts 02045.
3. Plaintiff Johnny Cupcakes, Inc. is a Massachusetts corporation having its principal place of business at 17 Nantasket Road, Hull, Massachusetts 02045.
4. Upon information and belief, Defendant Adjmi Apparel is a New York company with its principal place of business at 500 7th Avenue, New York, New York 10018.

5. Upon information and belief, Defendant Run Athletics is a New York limited liability company, located at 29 West 56th Street, New York, New York 10019.
6. Upon information and belief, Defendant Pastry is a New York limited liability company, located at 29 West 56th Street, New York, New York 10019.

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1338(a), 1338(b) and 17 U.S.C. § 101 *et seq.* Moreover, this Court has supplemental subject matter jurisdiction over this action pursuant to 28 U.S.C. §1367(a).
8. This Court has personal jurisdiction over Defendant Adjmi Apparel pursuant to NY CPLR § 301 or, alternatively, NY CPLR § 302(a).
9. Defendant Run Athletics pursuant to NY CPLR § 301, or in the alternative, NY CPLR § 302(a).
10. This Court has personal jurisdiction over Defendant Pastry pursuant to NY CPLR § 301, or alternatively, NY CPLR § 302(a).
11. Venue properly lies in this district pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and 1400(a).

COUNT I - Copyright Infringement

12. Clark Orr is the author the work “Make Cupcakes Not War Design”.
13. The work “Make Cupcakes Not War Design” is an original work fixed in a tangible medium.
14. The work “Make Cupcakes Not War Design” is artwork applied to a t-shirt.
15. Clark Orr transferred all right, title and interest in the work “Make Cupcakes Not War Design” to John M. Earle.

16. Plaintiff John M. Earle owns the work “Make Cupcakes Not War Design”.
17. The work “Make Cupcakes Not War Design” is a valid copyright.
18. The effective date of registration for the work “Make Cupcakes Not War Design” is August 15, 2007.
19. Plaintiff John M. Earle owns the exclusive rights in the work “Make Cupcakes Not War Design” pursuant to 17 U.S.C. § 106.
20. Plaintiff John M. Earle has the exclusive right to prepare derivative works and distribute copies of the work “Make Cupcakes Not War Design” pursuant to 17 U.S.C. § 106.
21. Plaintiff John M. Earle and Plaintiff Johnny Cupcakes sell t-shirts, featuring the “Make Cupcakes Not War Design” in stores and an online shop.
22. Defendant Adjmi Apparel has manufactured t-shirts, featuring a “Make Pastry Not War Design” attached hereto as Exhibit B.
23. Upon information and belief, Defendants contracted to sell t-shirts, featuring a “Make Pastry Not War Design”.
24. Defendants have authorized the advertisement of t-shirts, featuring a “Make Pastry Not War Design” in catalogs.
25. Defendants have infringed or continue to infringe the copyright of Plaintiff John M. Earle in violation of the Copyright Act by violating one or more of the exclusive rights of Plaintiff John M. Earle.
26. Defendants did not independently create the work “Make Pastry Not War Design”.
27. Defendants had access to the work “Make Cupcakes Not War Design” because Defendants’ t-shirt, featuring the “Make Pastry Not War Design” is strikingly similar to the work “Make Cupcakes Not War Design”.

28. Defendants' layout, type and style of the letters in Defendants' t-shirt, featuring the "Make Pastry Not War Design" are strikingly similar to Plaintiffs' layout, type and style of letters in the work "Make Cupcakes Not War Design".
29. The work "Make Cupcakes Not War Design" was accessible to the public.
30. Defendants have copied the work "Make Cupcakes Not War Design".
31. Defendants' t-shirt, featuring the "Make Pastry Not War Design" is substantially similar to the work "Make Cupcakes Not War Design".
32. Plaintiff John M. Earle has not granted Defendants a license of the exclusive rights in the work "Make Cupcakes Not War Design".
33. Defendants infringing conduct was willful.
34. Defendants infringing conduct has damaged and/or will damage Plaintiffs.

WHEREFORE, Plaintiffs pray:

- a. This Court issues a judgment that Defendants infringe the copyright of Plaintiff John M. Earle;
- b. This Court enjoins Defendants from copyright infringement pursuant to 17 U.S.C. § 502(a);
- c. This Court permits destruction of the Defendants articles, which infringe the copyright of Plaintiff John M. Earle pursuant to 17 U.S.C. § 503;
- d. This Court awards Plaintiffs actual damages for Defendants' copyright infringement pursuant to 17 U.S.C. § 504(a)(1);
- e. This Court awards Plaintiffs profits from Defendants' copyright infringement pursuant to 17 U.S.C. § 504(a)(1);

- f. This Court awards Plaintiffs statutory damages for Defendants' copyright infringement pursuant to 17 U.S.C. §§ 412(2) and 504(c);
- g. This Court awards Plaintiffs damages for Defendants' willful copyright infringement pursuant to 17 U.S.C. § 504(c)(2);
- h. This Court awards Plaintiffs costs and attorney's fees in this action pursuant to 17 U.S.C. § 505 and Fed. R. Civ. P. 54;
- i. This Court awards to Plaintiffs damages, plus interest thereon; and
- j. This Court grants such other relief as this Court deems just and appropriate.

JURY DEMAND

Plaintiff John M. Earle and Plaintiff Johnny Cupcakes demand a trial by jury on all issues properly tried to a jury.

Dated: August 18, 2008

Respectfully submitted,

SCHMEISER, OLSEN & WATTS, LLP

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EXHIBIT “A” of COMPLAINT

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

Registration Number:

VA 1-629-638

Effective date of
registration:

August 15, 2007

Title

Title of Work: Make Cupcakes Not War Design

Nature of Work: Artwork applied to a T-shirt

Completion/ Publication

Year of Completion: 2005

Date of 1st Publication: October 1, 2005

Nation of 1st Publication: United States

Author

Author: Clark Orr

Author Created: 2-Dimensional artwork

Work made for hire: No

Citizen of: United States

Year Born: 1984

Anonymous: Yes

Pseudonymous: No

Copyright claimant

Copyright Claimant: John M Earle

47 Nantasket Road, Hull, Massachusetts, 02045

Transfer Statement: Written agreement transferring and assigning all rights, title and interest
(con't. in "Notes")

Limitation of copyright claim

Previously registered: No

Certification

Name: Arlen L. Olsen, Esq.

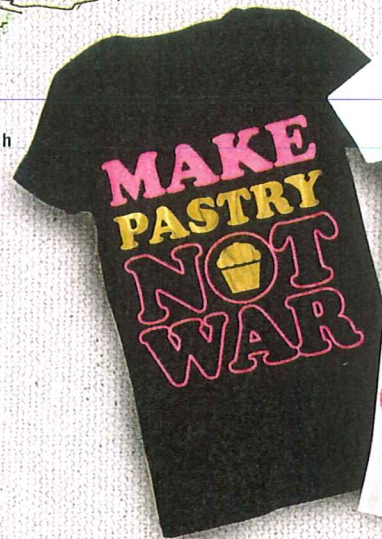
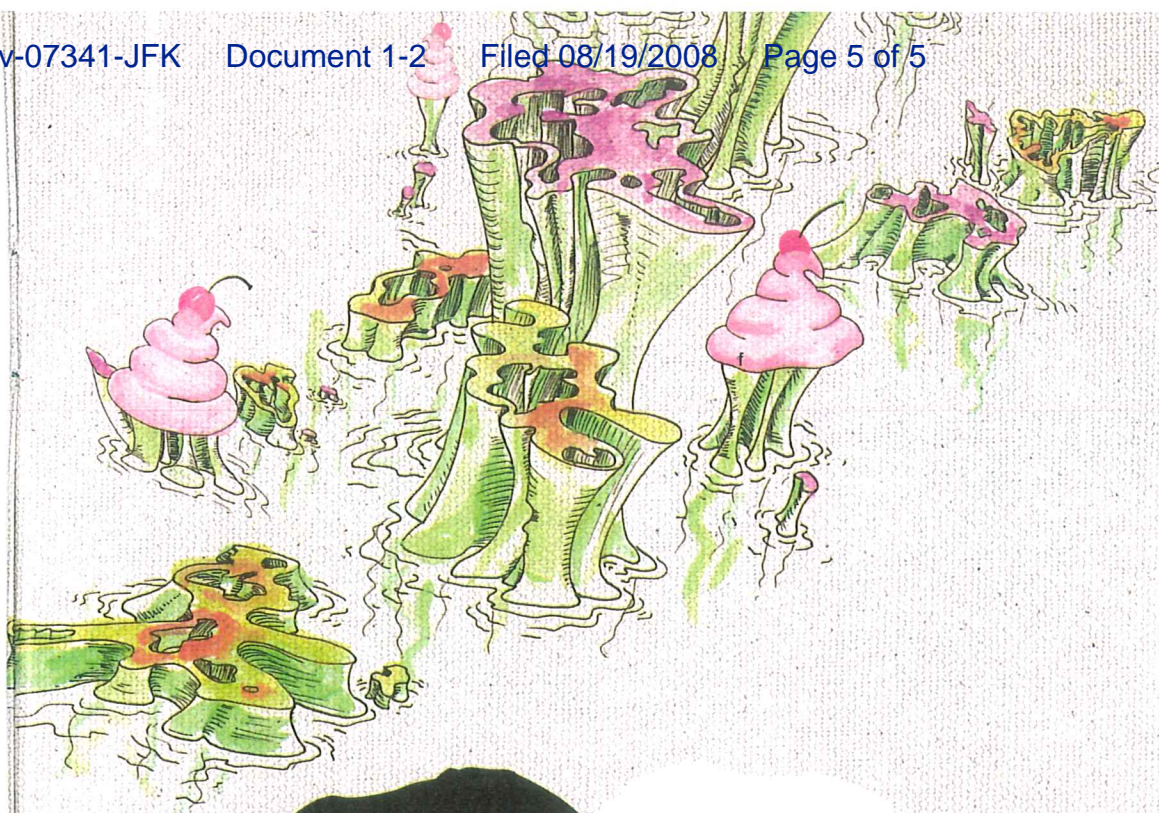
Date: August 10, 2007

Copyright Office notes: Regarding copyright claimant: transfer statement continues: "in Make Cupcakes Not War design."



**MAKE
CUPCAKES
NOT
WAR**

EXHIBIT “B” of COMPLAINT



Pastry Make Pastry \$30.00
 Sizes-S-XL. 95% Cotton/5% Spandex.

h women's black PT8T45 BLK

Pastry Glam Life \$30.00
 Sizes-S-XL. 95% Cotton/5% Spandex.

i women's white PT8T48 WTE



Pastry Glam Pie \$64.99
 Sizes-5-9,10

j women's strawberry/cream 70700 STR

k women's raspberry 70700 RAS

l women's gold/lavender 70700 GLD